

ELECTRONIC CIGARETTES

AAFP Position

The American Academy of Family Physicians (AAFP) recognizes the alarmingly increased use of electronic nicotine delivery systems (ENDS) – also called electronic cigarettes, e-cigarettes, or vaping devices – by youth and young adults, as well as its use by those attempting to quit smoking tobacco. The AAFP opposes all forms of [advertisement for tobacco products](#), including any form of [ENDS](#). The direct or indirect marketing and advertising of any tobacco products to children and youth should cease immediately. The AAFP supports efforts to limit youth access to e-cigarettes and implement [flavor bans](#) for all mint, menthol and fruit flavors. The AAFP also [calls for further research](#) to assess e-cigarettes' safety, quality, and efficacy as a potential smoking cessation device for current cigarette smokers.

Explaining E-Cigarettes

E-cigarettes are electronic devices for nicotine intake that produce an aerosol by heating a cartridge with liquid containing nicotine and other chemicals, including carcinogens and heavy metals.¹ Nicotine is a highly addictive substance that can affect the brain's development, making it especially toxic to developing fetuses and adolescents.² The average nicotine concentration in e-cigarettes has [increased](#) in recent years with most at a five percent nicotine content, but there are no nicotine concentration restrictions in the U.S.³ There have been recent [reports](#) of lung illnesses and deaths related to e-cigarette usage, with specific strong links to the unregulated additive Vitamin E acetate. Despite fewer chemicals compared to regular tobacco cigarettes, e-cigarettes are still unsafe and not currently approved nor recommended by the Food and Drug Administration (FDA) as a smoking cessation aid. E-cigarette use is most common among American youth. In 2019, over five million U.S. middle and high school students used e-cigarettes in the past 30 days, including 10.5 percent of middle school students and 27.5 percent of high school students.¹ Evidence suggests that vaping can introduce youth to tobacco cigarettes and other nicotine products later in life.² In 2015, almost 59 percent of overall adult e-cigarette users were also current regular cigarette users, almost 30 percent were former cigarette smokers, and 11.4 percent had never been cigarette smokers, undercutting the claim that e-cigarette use can lead to a decrease in cigarette smoking.¹

Federal Action

The federal government has been slow to respond to the threat posed by e-cigarettes, most notably to youth. In May 2016, the FDA [extended](#) its regulatory power to include e-cigarettes and banned their sale to youth under 18. The Surgeon General released a [2016 report](#) on the public health issue of e-cigarettes and their impact on youth and a 2018 Advisory on E-Cigarette Use Among Youth [report](#), which classified ENDS use among youth as an epidemic. In January 2020, the FDA released a new [policy](#) detailing that e-cigarette companies that do not cease manufacture, distribution, and sale of unauthorized flavored cartridge-based e-cigarettes within 30 days risk FDA enforcement. With evidence that youth are especially attracted to flavors like mint and fruit, the FDA has banned all flavors except tobacco and menthol to deter youth from using e-cigarettes, although many advocates see this as a fairly weak response considering the [initial promise](#) to ban all flavors, including menthol.⁴

¹ Centers for Disease Control and Prevention. (2020). "About Electronic Cigarettes (E-Cigarettes)." Web.

² National Institute on Drug Abuse. (2020). "Vaping Devices (Electronic Cigarettes)." Web.

³ Truth Initiative. (2019). "E-cigarettes: Facts, stats, and regulations." Web.

⁴ Cullen KA, Gentzke AS, Sawdey MD, et al. (2019). "E-Cigarette Use Among Youth in the United States, 2019." *JAMA*. Web.

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State Action and Legislation

Legal Action

Citizens and organizations have banded together to file lawsuits against e-cigarette companies. Juul Labs, Inc. accounts for over 75 percent of the e-cigarettes sold in the U.S. and is a target of many [lawsuits](#) claiming deceptive marketing to minors, new or worsened nicotine addiction, and health impacts including lung damage, seizures and hemorrhagic strokes. The e-cigarette industry is closely tied to the tobacco industry, particularly because tobacco companies Altria and Philip Morris have a 35 percent stake in Juul Labs.

How States Enforce the Minimum Age for E-Cigarette Purchase

While the federal [Tobacco 21](#) legislation prohibits any retailer to sell tobacco products, including e-cigarettes, to any individual under age 21, states are not required to update their sale laws to 21 but they are required to demonstrate that retailers are complying with the Tobacco 21 law. Common methods of enforcement include to designate an enforcement agency and/or require a specified number of compliance checks per retailer like [Alabama](#), educate retailers and/or require them to have signs at their stores as seen in [Hawaii](#) and [Massachusetts](#), threaten fines or suspension of retail licenses as an enforcement sanction as seen in [Delaware](#), and/or allow citizens to report violations.⁵

Required Retail License for E-Cigarettes

Licensure requirements for retail sellers is a [CDC recommended](#), evidence-based measure to reduce tobacco use. Licenses let states know which stores are selling products and help states enact policies that help prevent youth tobacco use. Twenty-seven states (AL, AK, AR, CA, CT, HI, IN, IA, KS, LA, ME, MD, MA, MN, MO, MT, NE, NV, NH, NY, OH, PA, RI, TX, UT, VT, WA) and DC require retailers to carry a license authorizing the sale of e-cigarettes.⁵ See examples of [New Hampshire](#) for a retail license requirement, and [Arkansas](#) and [California](#) which require separate permits for multiple locations.

E-Cigarette Excise Tax

Twenty-three states (CA, CT, DE, IL, KS, LA, ME, MA, MN, NV, NH, NJ, NM, NY, NC, OH, PA, UT, VT, WA, WV, WI, WY) and DC have an excise tax on e-cigarettes.⁶ State taxes are either a percentage of total price like [Nevada's](#) 30% tax rate, a rate per milliliter of e-liquid or a rate per cartridge as seen in [Louisiana's](#) \$0.05 per milliliter tax, or a combination of both as seen in [Connecticut](#). These funds can be dedicated to tobacco and e-cigarette prevention, cessation, and control programs.

E-Cigarette Flavor Ban

Eight states (MA, MI, MT, NY, OR, RI, UT, WA) have issued emergency rules to temporarily ban the sale of flavored e-cigarettes. Despite the initial action, these rules have faced fierce legal challenges and are currently only in effect in Washington state and Montana.³ Only four states ([MA](#), [NJ](#), [NY](#), [RI](#)) have permanently prohibited all flavored e-cigarettes by legislation, going beyond the FDA policy to also ban menthol in addition to mint.

Product Packaging

States can enact laws that regulate the product packaging of e-cigarettes and liquid pods, often to ensure child-resistant packaging. Twenty-nine states (AL, AR, CA, IL, IN, ME, MA, MI, MN, MO, NH, NJ, NM, NY, NC, ND, OH, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WY) have some type of law that regulates product packaging.⁴ [New Mexico's](#) law requires that nicotine liquid be sold in child-resistant containers, and that e-cigarettes and nicotine liquid containers must be sold in the original, factory-sealed package. In comparison, [Washington's](#) law requires that liquid nicotine containers be child resistant and must include warnings with the harmful effects of nicotine, to keep the product away from children, that vaping is illegal for minors, and a nicotine amount disclosure for "open systems."

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⁵ Tobacco Twenty-One. "Enforcement Memo." *Preventing Tobacco Addiction Foundation*. Web.

⁶ National Conference of State Legislatures. (2020). "E-Cigarette & Vaping Product Taxes." Web.